

Remarks:

In the August 23, 2006, Office Action, Claim 142 was objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 104 and 107-109 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. Claims 108, 111, 123, 127, and 144 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. Claim 125 was rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. Claim 142 was rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite.

In the August 23, 2006, Office Action, Claims 1, 2, 8, 9, 14, 75, 79, 83-86, 93, 104, 107, 108-111, 122, 125-128, 131, 133, and 144-146 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 75, 77, 78, 80, 84, 86-90, and 94 of U.S. Patent No. 7,086,782. Claims 125, 131, 133, 135-141, and 143 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 75, 77-79, 86-92, and 95 of copending Application No. 10/300,355.

Claims 1, 75, 83, 85, 86, 104, 125, 130, 131, 132, 139, and 144 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 17, 20, 43, 44, 50, 55, 57, 60, and 85 of copending Application No. 10/300,487. Claims 1, 75, 104, 125-128, 130, and 140-147 were provisionally rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over Claims 84, 89, 94-99, 102, and 103 of copending Application No. 10/300,609.

On the merits, Claim 104 was rejected under 35 U.S.C. Section 102(b) as being anticipated by Herber et al. (U.S. Patent No. 5,525,363). Claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137, and 142-147 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. (U.S. Patent No. 6,327,754) in view of Stolmeier et al. (U.S. Patent No. 6,257,763). Claims 16, 93, 131, 138, 139, and 141 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and Hayashi et al.

Claim 133 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and May (U.S. Patent No. 5,725,312). Claim 140 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and Boeckmann et al. (U.S. Patent No. 4,846,585). Claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, 130, 132-139, and 142-147 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Herber et al. in view of Stolmeier et al.

Claim 140 was rejected under 35 U.S.C. Section as being unpatentable over Herber et al. in view of Stolmeier et al. and Boeckmann et al. Claims 131 and 141 were rejected under 35 U.S.C. Section as being unpatentable over Herber et al. in view of Stolmeier et al. and Hayashi et al.

### **Claim Objection**

The objection to Claim 142 is improper. There is no requirement in the law, regulations, or the MPEP that a claim must modify a preceding (lower number) claim. Rather, a dependant claim must modify a claim from which it depends, and Claim 142 clearly meets this requirement. Following allowance, the claims are renumbered to place them in proper order. Withdrawal of the objection is respectfully requested.

### **Section 112 Rejections**

With regard to the 35 U.S.C. Section 112, second paragraph, rejection of Claim 104 as being indefinite, Applicants have reviewed the language of Claim 104 and believe that the issue noted in the August 23, 2006, Office Action was that the language implied that the skirt web material was included in the fastener halves. If this interpretation was taken, then not all of the fastener halves including the skirt structure of skirt web material would be located above the areas of structural weakness. Applicants have amended Claim 142 to indicate that the fastener halves each have a skirt structure of skirt web material extending from them. Thus, the fastener halves no longer include the skirt structure of skirt web material, and the fastener halves are specified to be located above the areas of structural weakness. The amendment to Claim 104 is believed to also obviate this issue with regard to dependant Claims 107-109 as well. Accordingly, withdrawal of this rejection and reconsideration of these claims is respectfully requested.

With regard to the 35 U.S.C. Section 112, second paragraph, rejection of Claims 108, 111, 123, 127, and 144 as being indefinite, Applicants maintain the term "at least a

substantial portion" is not indefinite. The term "substantial" is an adjective meaning largely but not wholly according to the Merriam-Webster Online Dictionary. Thus, "a substantial portion" of the fastener structure extending beyond the portions of the web material when the tear off portion has been removed therefrom clearly would mean that the fastener structure largely, but not completely, extends beyond the portions of web material. The addition of the words "at least" to the term "a substantial portion" extends coverage to include up to the entire fastener structure extending beyond the portions of the web material. This term is thus not in any way indefinite, and has been accepted in the claims of 2527 patents since 1976, and has been accepted in litigations including claims with this term as well.

Applicants emphatically disagree with the Examiners interpretation that "a substantial portion" means "any portion of the 'reclosable fastener extending beyond the portion of said sheet of web material opposite said opening.'" The limitation "a substantial portion" clearly requires more than "any portion," no matter how small.

Thus, this rejection is respectfully traversed, and reconsideration of Claims 108, 111, 123, 127, and 144 is requested.

With regard to the 35 U.S.C. Section 112, second paragraph, rejection of Claim 125 as being indefinite, Applicants have amended Claim 125 to correct the identified language to eliminate the antecedent basis problem. Applicants thank the Examiner for noting this issue, and respectfully request reconsideration of Claim 125.

With regard to the 35 U.S.C. Section 112, second paragraph, rejection of Claim 142 as being indefinite, Applicants traverse this rejection since it is demonstrably incorrect. Claim 142 depends from Claim 143, which, as stated above, is entirely acceptable procedurally. The term "said slider" in Claim 142 is based upon the antecedent basis found in Claim 143 which defines the slider. Withdrawal of this rejection is accordingly respectfully requested.

### **Double Patenting Rejections**

With regard to the double patenting rejection based upon Claims 75, 77, 78, 80, 84, 86-90, and 94 of U.S. Patent No. 7,086,782, Applicants note that U.S. Patent No. 7,086,782 has only Claims 1-20. Accordingly, this double patenting rejection appears to be erroneous.

With regard to all of the double patenting rejections, Applicants believe that they are incorrect inasmuch as the reason the issued patent, the three pending patent applications, and the present patent application exist as separate patent applications is by virtue of the fact that U.S. Patent Application No. 09/804,403 had a restriction requirement issued which forced the filing of numerous other patent applications. By virtue of the U.S. Patent and Trademark Office having issued the restriction requirement and the divisional patent applications having been filed, the Examiner is barred from issuing a double patenting rejection, since by definition a restriction requirement cannot be issued unless the inventions which are the subject of the restriction requirement are independently patentable. Thus, the double patenting rejections in the August 23, 2006,

Office Action are also per se improper and must be withdrawn. Accordingly, withdrawal of the double patent rejections is respectfully requested.

**Section 102(b) Rejection**

Claim 104 was rejected under Section 102, which requires that each and every limitation of the claim be taught by the cited reference, namely the Herber et al. reference. Claim 104 clearly defines over the Herber et al. reference, in which the perforation is not located with respect to the fastener structure in a manner which allows the engageable fastener tracks or halves to extend past the areas of structural weakness. In the Herber et al. reference, the areas of structural weakness (the lines of perforation 254) are clearly located well above the male and female closure members (the male profile 218 and the female profile 220). In contrast, Claim 104 specifically requires that "said fastener halves of said reclosable fastener structure are located above said areas of structural weakness and within said fold structure."

Since the Herber et al. reference has the male and female closure members (the male profile 218 and the female profile 220) located below the areas of structural weakness (the lines of perforation 254), the Herber et al. reference clearly does not anticipate Claim 104. Indeed, the Herber et al. reference actually teaches away from the invention as taught in Claim 104. Accordingly, Applicants respectfully request the withdrawal of the Section 102 rejection of Claim 104 and allowance of Claim 104, as well as Claims 107-112 which depend from Claim 104.

### **Section 103(a) Rejections**

All of the independent claims in the present patent application, namely Claims 1, 75, 104, 125, and 144, have been rejected under Section 103 on two different combinations: the Belmont et al. and Stolmeier et al. references; and the Herber et al. and Stolmeier et al. references. Applicants have carefully reviewed these three references together with the Examiner's comments in the August 23, 2006, Office Action, and have concluded that the two rejections are deficient in that the references do not teach the invention as claimed in independent Claims 1, 75, 104, 125, and 144. The two Section 103 rejections will be discussed separately below.

Belmont et al. and Stolmeier et al. -- The Section 103 rejection of independent Claims 1, 75, 104, 125, and 144 on the combination of the Belmont et al. reference with the Stolmeier et al. reference is deficient in that it does not teach all of the limitations of these claims. The Belmont et al. reference is cited as teaching a bottom-fill embodiment in Fig. 3C in which the fastener is located in the fold of the bag. However, Belmont et al. does not include any areas of weakness in the portion of the bag including the fold. To overcome this limitation, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

What the Examiner proposes in the combination is to grossly modify the Stolmeier et al. reference to not use the separate tamper evident sheet 60 forming the hood at all, but to take the perforations 72 which were in the hood of the Stolmeier et al. reference and move them to the web 52 of the Belmont et al. reference. One skilled in the art would quite simply not do this, since it would require radical changes in both the construction of the Belmont et al. reference and the construction of the Stolmeier et al. reference. The Stolmeier et al. reference teaches adding the tamper evident sheet to the construction of a bag having a reclosable closure 70. Since the Belmont et al. reference already has a tamper evident closure covering its reclosable fastener or zipper arrangement 14, it would be counterintuitive to add the tamper evident sheet 60 of the Stolmeier et al. reference. To assert the contrary is to be intellectually dishonest at best, and clearly involves the use of hindsight and uses Applicants' claims as both a parts list and an assembly guide.

If one skilled in the art was to combine the perforations 72 in the tamper evident sheet 60 of the Stolmeier et al. reference with a bag of the Belmont et al. reference, one would instead use the embodiment of the Belmont et al. reference shown in Figs. 1 and 2, and add the tamper evident sheet 60 with the perforations 72 from the Stolmeier et al. reference.

It is also important to note that the Belmont et al. reference clearly teaches sealing the wall panels 16 and 18 to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14, which



construction would be completely untenable with a perforation at that location since high speed manufacturing equipment making the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why both the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. The conclusion is clear -- one skilled in the art would not make the untenable combination and gross changes necessitated by the tortured combination asserted in the August 23, 2006, Office Action.

Accordingly, the Section 103 rejection of independent Claims 1, 75, 104, 125, and 144 on the combination of the Belmont et al. reference with the Stolmeier et al. reference is unsustainable, and Applicants respectfully request that it be withdrawn.

Herber et al. and Stolmeier et al. -- The Section 103 rejection of independent Claims 1, 75, 104, 125, and 144 on the combination of the Herber et al. reference with the Stolmeier et al. reference is also deficient in that it does not teach the limitations of the these claims. As an initial matter, the August 23, 2006, Office Action misrepresents the locations of the perforations 254 in the Herber et al. reference as being only "in the parent film," that is to say only in the front sidewall 234 and the rear sidewall 236 . Rather, "[t]he perforations penetrate both the front sidewall 234 and the rear sidewall 236 **as well as the closure member flanges 214 and 216.**" Column 10, lines 21-23, emphasis added.

Next, the August 23, 2006, Office Action discusses the construction shown in Figs. 3 and 4, which is an entirely different construction from the construction of Figs. 18

and 19. This is truly unfortunate; however, the point that the Examiner attempts to make in this passage is apparently that the Herber et al. reference includes engageable tracks having a skirt structure similar to that in independent Claims 1, 75, 104, 125, and 144 of the present patent application. This is absolutely incorrect. The Herber et al. reference has flanges 210 and 212 in Figs. 18 and 19, and closure members 24 and 26 in Figs. 3 and 4, that extend both well above and well below the interlocking zipper profiles (218 and 220 in Figs. 18, and 19, 32 and 34 in Figs. 3 and 4). This is a construction which is utterly dissimilar to the construction claimed in the present patent application.

The addition of the Stolmeier et al. reference to the bag of the Herber et al. reference is utterly absurd, since the Herber et al. reference already has perforations allowing for the removal of the top of the bag (a removal which leaves the fastener of the Herber et al. reference well below the level of the remaining portion of the bag as well as the flanges of the fastener, a construction utterly dissimilar to that contained in independent Claims 1, 75, 104, 125, and 144 of the present patent application. Thus, one skilled in the art would not look to the Stolmeier et al. reference since what the Examiner proposes adding is also contained in the Herber et al. bag. So how does the August 23, 2006, Office Action propose to use the Stolmeier et al. reference to modify the Herber et al. bag?

"It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify Herbert et al. **to extend the fastener structures above the area of structural weakness** as taught by Stolmeier

et al. for the purpose of providing greater accessibility to the reclosable tracks and providing (sic) a greater opening distance when the track is opened." August 23, 2006, Office Action, page 16, emphasis added.

Thus, the Examiner proposes having the fastener structures (the profiles 218 and 220 in Figs. 18 and 19, and the profiles 32 and 34 in Figs. 3 and 4) located above the areas of structural weakness. Thus, the Examiner proposes moving the perforation 254 in Figs. 18 and 19, or the perforation 88 in Figs. 3 and 4, to a location below the fastener structures. Consider that the sidewalls (234 and 236 in Figs. 18 and 19, 12 and 14 in Figs. 3 and 4) are permanently secured to the flanges (210 and 212 in Figs. 18 and 19) or to the closure members (24 and 26 in Figs. 3 and 4). **By locating the perforation such that the fastener structures are locate above the perforations, as the Examiner suggests in the passage linking the Herber et al. and Stolmeier et al. references, the result is that the entire top portion of the bag, including the fastener structures (the profiles 218 and 220 in Figs. 18 and 19, and the profiles 32 and 34 in Figs. 3 and 4), would be torn off!** Thus, the bag would be opened permanently and the function of the faster structures would be nonexistent.

Thus, one skilled in the art would certainly never make the combination of the Herber et al. and Stolmeier et al. references suggested in the August 23, 2007 Office Action, since it would result in a non-operable bag. Accordingly, the Section 103 rejection of independent Claims 1, 75, 104, 125, and 144 on the combination of the

Herber et al. reference with the Stolmeier et al. reference is also untenable, and Applicants respectfully request that it be withdrawn.

With regard to the Hayashi et al., May, and Boeckmann et al. references, the Examiner indicated that he did not understand Applications' reference to them in the February 7, 2006, Amendment G. Applicants' point was that these references were all cited as secondary references with respect to dependent claims (they were alleged to teach limitations contained in the dependent claims). Since Applicants believed then (and continue to believe) that independent Claims 1, 75, 104, 125, and 144 are each and all patentable over the cited references, any claims depending from these independent claims would by definition also be patentable. Accordingly, there was (and is) no need to discuss the additional limitations of the dependant claims at this time.

Applicants believe that Claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, and 130-147 are patentable at this time. These claims remain pending following entry of this Amendment H, and are believed to be in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment H and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application

could so be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

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